

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 904 OF 2007

M/s.Subhash Liquors P.Ltd Petitioners

Versus

M/s.Suyash Enterprises Respondents

Rajesh S.Datar for the petitioners.

Mr.V.G.Peshave for the respondents.

Coram: S.C.Dharmadhikari, J.

26.11.2007

P.C. :

1. The impugned order dismisses an application for condonation of delay in applying for setting aside an ex-parte decree passed against the petitioner defendant in Special Civil Suit No. 646 of 2004. The application was preferred in October, 2006. This Special Civil Suit No. 646 of 2004 was decreed with

costs on 16.3.2006. The applicant's application was delayed and that is how the Miscellaneous Application No. 680 of 2000 was filed to condone the delay in applying for setting aside the ex-parte decree. That application having been rejected by the impugned order, the present petition under Article 227 of the Constitution of India has been filed.

2. When this petition was pending, this court recorded the statement of the petitioners that they would deposit the decretal sum in the trial court. Accordingly Mr.Datar states that a sum of Rs.12,95,591/- has been deposited in the Trial Court.

3. After having perused the impugned order and also confirming the fact of the deposit, I am of the view that the applicant petitioner/original defendant deserves to have his application for setting aside the decree against him heard on merits. That application and the cause set out therein, needs to be gone into and duly considered by the Trial Court in the peculiar facts of this case. Since the respondent is secured by the deposit and further the petitioner agreeing to pay cost

quantified at Rs.2000/- in the Trial Court within a period of two weeks from today, the impugned order dated 4.1.2007 passed below in Miscellaneous Application No. 680 of 2006 is quashed and set aside. Miscellaneous Application No. 608 of 2000 is allowed. However the petitioner to pay costs to the respondent original plaintiff within two weeks from today.

4. The Trial Court to now consider miscellaneous application which has been filed for setting aside the decree passed ex-parte. That application be decided as expeditiously as possible and within a period of three months from the date of appearance of parties. The Trial Court to invest the sum deposited with it initially for a period of six months in a Fixed-Deposit with a nationalised bank. Needless to state that the Decree not to be executed for a period of three months.
